

No. 9/9/86-6Lab./9485.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Joy. B. Industries, Plot No. 162, Sector 24, Faridabad :—

BEFORE SHRI S.B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 473/1982

between

SHRI GANESH YADAV, WORKMAN AND THE MANAGEMENT OF M/S JOY B. INDUSTRIES,
PLOT No. 162, SECTOR 24, FARIDABAD

Present:—

Shri C.L. Oberai for the workman.

Shri R. C. Sharma for the Management

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section -10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Governor of Haryana referred the following dispute between Shri Ganesh Yadav workman and M/s Joy. B. Industries, Plot No. 162, Sector 24, Faridabad to this Tribunal for adjudication :—

Whether the termination of service of Shri Ganesh Yadav was justified and in order? If not, to what relief is he entitled?

2. On receipt of order of reference, notices of the same were issued to the parties. Both the parties put in appearance. The case of the petitioner is that he was employed with the respondent as helper since 5th October, 1979 and that his services were illegally terminated on 29th July, 1982. He alleged that his termination was illegal as there was no compliance of mandatory provisions of Section 25-F of the Act. He prayed for reinstatement with full back wages.

3. The claim of the petitioner was controverted in the written statement filed by the respondent. It pleaded that the petitioner was a temporary workman and has worked for less than 240 days in the preceding 12 calendar months and that his services were terminated as there was shortage of work in the factory. The respondent also took the plea that petitioner is not entitled to any benefit under Section 25-F of the Act, and that termination of his services is quite legal and justified.

4. Besides this, it was also pleaded by the respondent that after termination of services of the petitioner more than 55 workers were retrenched on 13th August, 1982.

5. The petitioner reiterated his stand in the rejoinder filed by him. He denied that he was a temporary worker.

6. On the pleadings of the parties, the following issues were settled by Shri R. N. Batra, the then Presiding Officer:—

(1) Whether the termination of services of Shri Ganesh Yadav was justified and in order? If not, to what relief he is entitled? OPM.

7. It may be mentioned that the petitioner appeared as his own witness as WW-1. He also placed on record Ex. W-1 E.S.I. Card and copy of the letter Ex. W-2. The respondent Management examined Jaggi Chand Goyal, Accountant of their factory and produced documents Ex. M-1 to M-3. I have heard the learned authorised Representatives of both the parties and perused the material on the record. My findings on the above issues are as under:—

Issue No. 1—

8. Admittedly, the services of the petitioner were terminated on 29th July, 1982. There can be no dispute that the petitioner was in service being on the rolls of the respondent Company on 2nd May, 1981 as is evident from the E.S.I. Card Ex. W-1 produced by the claimant. This card clearly shows the date of entry into service of the petitioner as 2nd May, 1981. The employer code mentioned on this card is correct and pertained to the respondent Company. This position is admitted by Jaggi Chand Goyal, Accountant MW-1 in his cross-examination. Even the documents produced by the respondent Company lend support to the view that the petitioner was in employment of the respondent Company in May, 1981. The respondent Company had remitted a sum of Rs. 9,789.75 Paise as contribution toward Employees State Insurance Scheme, in respect of

different employees working with them. The name of Ganesh Yadav petitioner appeared in list of employees as is evident from the letter Ex. M-2 and M-3. His name figured at serial No. 62 in document Ex. M-2. Thus it is quite reasonable to infer that Ganesh Yadav petitioner was on the rolls of respondent Company on 2nd May, 1981. and that he had continuously been working with the respondent till the date of termination, i.e., 29th July, 1982. In other words, the petitioner had actually worked for more than 240 days within the preceding 12 calendar months.

9. It also cannot be inferred from the testimony of Jaggi Chand Goyal, Accountant MW-1 that the petitioner had worked for less than 240 days with the respondent Company in the preceding 12 calendar months because the attendance register brought by him pertained to some other Ganesh and not the petitioner. The attendance register brought by him related to the attendance of Ganesh, s/o Shri Babu Lal Yadav whereas the petitioner's father's name is Risal Yadav. It is also worthwhile to point out that the particulars of the petitioner and his parentage had been correctly recorded in the E.S.I. Card Ex. W-1 which clearly shows that the petitioner was in service of the respondent Company since 2nd May, 1981. Even otherwise much weight cannot be given to the testimony of Jaggi Chand Goyal, Accountant MW-1 because he had not brought the payment of wages register. The production of said register has been with held and adverse inference is to be drawn against the respondent. It may also be high lighted that even in the written statement, the respondent Company had not specified the date of joining of the petitioner with them. Thus evidence of Jaggi Chand Goyal, Accountant MW-1 pertains to different employee. No retrenchment compensation or notice pay in lieu of notice in terms of Section 25-F of the Act was ever paid to the petitioner before terminating this service.

10. The Authorised Representative of the respondent contended that before a workman can complain of retrenchment being not in consonance with Section 25-F of the Act, he has to show that he has been in continuous service for not less than one year under the employer who has retrenched him from service. He cited the case of **Mohan Lal Appellant v. The Management of M/s Bharat Electronics Ltd. Respondent**, 1981 Lab I. G., page 806 (Supreme Court). There is no dispute with this proposition of law. In our instant case the petitioner has successfully shown that he has been in continuous service under the employer for more than one year. Termination by the employer of service of the petitioner for any reason whatsoever would constitute retrenchment under Section 2(00) except in cases excepted in the section itself. In the present case the termination of the petitioner's service does not fall in nature of the excepted or excluded category. Therefore, it would be a retrenchment within the meaning of word as defined under Section 2(00) of the Act. Admittedly, in this case, prerequisite for valid retrenchment as laid down in Section 25-F of the Act, have not been complied with. Thus the termination of service of the petitioner is void *ab initio*.

11. It makes no difference that 55 workers have been retrenched on 13th August, 1982, i.e., subsequent to the termination of service of the petitioner because this Tribunal has no concern with the retrenchment of other workmen. This Tribunal has to find out whether the termination of services of the petitioner is justified or not.

12. It was also contended by the Authorised Representative of the respondent that the respondent factory has since been closed. Such contention cannot be accepted because no such plea was taken in the written statement. It appears that such plea has been put forth by the respondent Company at late stage to avoid liability.

13. In view of the aforesaid discussion, I hold that the requisite conditions for valid retrenchment have not complied with and consequently, the termination of service of the petitioner is invalid and inoperative. Accordingly, I set aside the order of termination and the petitioner is ordered to be reinstated with continuity of service and all back wages. The award is passed accordingly. No order as to cost.

Dated, the 23rd September, 1986.

S. B. AHUJA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 640, dated 30th September, 1986.

Forwarded (four copies) to the Financial Commissioner & Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.